IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 53 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAVINDRANATH TAGOR EDUCATION - Petitioner(s)

Versus

GUJARAT SECONDARY & HIGHER SECONDARY EDUCATION BOARD & 30 - Respondent(s)

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Appearance :

MR MIHIR JOSHI, Senior Counsel with MR ANSHIN H DESAI for Petitioner(s)
MR AD OZA for Respondent(s) : 1
MR VM PANCHOLI, AGP, for Respondent(s) : 2
MS MAMTA R VYAS for Respondent(s) : 3
MR RM CHHAYA for Respondent(s) : 4 - 6.
MR NV ANJARIA for Respondent(s) : 7 - 31.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/09/2005

ORAL JUDGMENT

1.0 Rule. At the request of learned counsel for the respective parties this petition is taken up for final hearing today.

2.0 By this petition the petitioner has challenged the legality and validity of the order passed by the respondent no.1 Gujarat Secondary & Higher Secondary Education Board whereby the said respondent has cancelled the registration of Ideal English School run and managed by the petitioner Shri Ravindranath Tagore Education & Charitable Trust.

3.0 The short facts relevant for the purpose of deciding the controversy involved in this petition are as under:

3.1 As the petitioner wanted to shift the premises of the school, the petitioner made an application in the prescribed form on 7.1.2003 to the respondent authorities. A reminder was thereafter sent on 15.1.2003. The respondent no.1, vide communication dated 4.2.2003, sought certain details. The respondent no.2 by his communication dated 1.9.2003, opined that the petitioner has made a reasonable request for transfer of the school premises and he had also opined that the earlier old building of the school was not fit for having an educational institute therein.

3.2 One Narandas Sundardas Jivnani, who was initially the trustee, had resigned and his name was deleted from the PTR register.

3.3 In view of certain irregularities committed by the Principal of the school, she was placed under suspension. The said suspension order was ratified and approved by the District Education Officer. The said Principal was wife of Narandas Jivnani

who had resigned as Trustee from the Board of Trustees of the petitioner. After the suspension the said Principal, along with four teachers from the school of the petitioner started a new school in the same name at the earlier place under the leadership of Narandas Jivnani. It appears that a rojkam was carried out by the office of the District Education officer on 31.7.2004, wherein it is stated that the said four teachers along with two peons have remained unauthorisedly absent.

3.4 The respondent no.2 addressed a communication dated 13.8.2004 to the petitioner at Timbawadi, Junagadh, wherein it was stated that the petitioner should stop running the school at Timbawadi, Junagadh. This was contrary to the earlier communication of the DEO giving an opinion to transfer the school premises at the place in question.

3.5 Pursuant to the report of DEO dated 23.11.2003, a notice dated 15.9.2004 came to be issued by the respondent no.1 seeking explanation as to why registration of the school should not be cancelled. The petitioner submitted its detailed reply on 25.9.2004.

3.6 Thereafter a notice came to be issued on 11.11.2004 by the respondent No.1 Board with regard to the decision to be taken about the transfer of the school. On 23.11.2004 the representative of the petitioner remained present before the respondent authorities and submitted his detailed reply. According to the petitioner, no hearing was given on that day with regard to the issue of transfer of the school premises. Thereafter, the respondent No.1 passed the order dated 17.12.2004

whereby the respondent no.1 cancelled the registration of Ideal English School which is challenged in the present petition.

4.0 Heard the learned counsel for the respective parties and perused the relevant record of the petition.

4.1 The issue with regard to the claim of management is subject matter of dispute before the Joint Charity Commissioner, District Junagadh. Since the said proceedings are pending before competent court/authority, it would be in the interest of parties to deal with the said point in this petition. Therefore, this Court is not required to deal with the said issue. The only question to be answered by this Court is whether the order of cancellation of registration of the School is just and proper or not. Therefore Mr. Mihir Joshi, learned Senior Counsel has concentrated and urged only the aforesaid point.

5.0 Mr. Joshi has contended that the impugned order has been passed without granting an opportunity of hearing and without supplying documents as demanded by the petitioner. It is the contention of the learned counsel for the petitioner that the impugned order has been passed relying on the report of the District Education Officer dated 23.8.2004, but the same was not referred to in the notice dated 15th September 2004. He contended that the impugned order has been passed in pursuance of the dispute in respect of suspension of one Smt. Jankiben, erstwhile Principal of the School, on 13th March 2004 for misappropriation of an amount of Rs.3 lacs for purchase of computer and the said Principal is wife of one of the

Trustees who had resigned from the Trust. According to Mr. Joshi, the District Education officer himself, by recommendation dated 1st September 2003, has recommended for transfer in view of the condition of the building in which the old school was functioning.

6.0 Mr. Joshi has contended that due to good relation between the old management and the officers at District level the report has been changed after 11 months i.e. on 23rd August 2004, which is not referred in the notice nor copy of which is supplied to the petitioner. He further contended that from the communication at Annexure-Q (page 64) it is clear that the petitioners were called for hearing pursuant to their application for transfer of the school building and the hearing given was in respect of the transfer of the school, whereas the order has been passed for cancellation of registration. In fact notice dated 15.9.2004 was replied to on 25.9.2004. In that view of the matter petitioner was under the impression that its reply has been accepted by the authority. Mr. Joshi has lastly contended that though detailed reply has been submitted, the same was not dealt with nor any reasons are assigned by the authority for passing the impugned order.

7.0 Mr. A.D. Oza,learned Government Pleader, appearing for respondent no.1 submitted that the petitioner has no locus to file the present petition. He has placed reliance upon the various Regulations of the Gujarat Secondary Education Board, Gandhinagar, Regulations, 1974.

7.1 Mr. Oza further submitted that the petitioner has an alternative remedy by

way of appeal and therefore this petition may not be entertained.

7.2 According to Mr.Oza, sufficient opportunity was given to the petitioner before passing the impugned order and therefore the said order is just and proper.

8.0 Mr. V.M. Pancholi appearing for the District Education Officer states that he has nothing to say in the matter as there is no prayer against District Education officer.

9.0 Mr. R.M. Chhaya and Mr. N.V. Anjaria appearing for respondent nos.4 to 6 and 7 to 31 respectively stated that in view of the order passed in Civil Application No.1974/2005 in Letters Patent Appeal No.462 of 2005 they are supporting the case of the petitioner. The order passed in the LPA reads as under:

> "Notice of Civil Application as well as Letters Patent Appeal to Shri A.D. Oza, Standing Counsel, Gujarat Secondary & Higher Secondary Education Board.
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> Shri Oza says that the Board will arrange special examination for the students like Rahul Durlabhbhai Adroja, if Special Civil Application No.53 of 2005 filed by the Institution where they are alleged to have undertaken studies, is allowed by the Court.
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> In view of the statement made by Shri Oza, we do not consider necessary to issue an interim order for allowing the student to appear in the examination form 17th March 2005 and direct that he shall be free to prosecute the application filed in Special Civil Application No.53 of 2005.
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> With the above observation, the Civil Application and the Letters Patent Appeal are disposed of."

10.0 At the outset it is required to be noted that there are no prayers made against

District Education Officer. The respondent no.3 has already preferred an appeal before the State Government and therefore respondent no.3 also supports the case of the petitioner. The only disputed question is as to who is in management which is an issue pending before the District Court.

11.0 As a result of the hearing and perusal of the document I am of the opinion that the contentions raised on behalf of the petitioner are required to be accepted.

12.0 The notice dated 15.9.2004 is based on the report dated 24.12.2003 which is for transfer; whereas the notice has been issued for cancellation.

12.1 The petitioner had specifically demanded certain documents from the respondent no.1. Admittedly those documents were not supplied to the petitioner. It is therefore clear that the impugned order has been passed without supplying vital documents. Learned counsel for the respondent no.1 is unable to point out that the authorities have supplied the documents sought by the petitioner. Therefore there is violation of principles of natural justice.

12.2 I find substance in the contention raised by the petitioner that no notice has been given for hearing for cancellation of the registration. Being a statutory body, and looking to the fact that the petitioner was running a school where many students were prosecuting their studies, the authority ought to have issued a notice to the petitioner when they contemplated to cancel the registration. In the communication dated 11th November 2004 the issue was with regard to the transfer of the school.

From the record it is seen that the petitioner had submitted a detailed reply defending its case. However, without hearing the petitioner with regard to cancellation of registration the impugned order came to be passed. Therefore, from the record it is established that the notice for hearing was given only for the purpose of transfer of the premises of the school and not in respect of cancellation of registration of the school. The respondent no.1 has therefore passed the order impugned in this petition in clear violation of principles of natural justice.

12.3 The contention that the impugned order is an unreasoned order is also required to be accepted. Admittedly a detailed reply was filed on 25th September 2004 which is an exhaustive one. This Court finds that none of the grounds raised in the said reply has been mentioned nor dealt with in the impugned order. I am of the view that when the authority is contemplating to take a harsh decision like cancellation of registration of school, which would affect the future of many students, they ought to have considered the matter in detail and ought to have considered the reply filed by the petitioner in detail. Mr. Joshi has relied upon a decision in the case of Sharda Education Trust Vs. State, reported in 17 GLR 208, wherein it is held as under:

> "It is well-settled that every administrative authority exercising quasi-judicial functions is bound to give reasons in support of the order it makes. Even though the statute may not provide in so many words that the authority passing an order is required to act judicially, the duty so to act can be inferred from the express provisions of the statute read along with the nature of the power conferred, the person o whom it is conferred, the manner of disposal provided, the objective criterion, if any, to be adopted, the effect of the decision on the person affected and other indicia afforded by the statute (paras 6 and 7)."

Same principle has been laid down by the Apex Court in the case of Notified Area Committee Vs. additional Director, Consolidation and others, reported in (2002) 10 SCC 87, wherein it is held that reasons are the flesh and blood of judicial adjudication and such reasons must be shown in the orders which are liable to be challenged in the superior court.

12.4 There is also force in the submission of the learned counsel for the petitioner that the respondent cannot travel beyond the reasonings given in the order and cannot rely upon the documents which are not on the record or the documents considered by the authority while passing the order. The decision in the case of Mohinder Singh Vs. Chief Election Commissioner, reported in AIR 1978 SC 851 supports this view wherein it is stated that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.

12.5 I do not find any substance in the contention raised by the learned counsel for the respondent no.1 with regard to locus of the petitioner. In the order the petitioner was referred to as Managing Trustee and the rival group was considered as “Claiming Managing Trustee”. The reply filed by the petitioner has been taken into consideration and the reference of the rival group was not considered while passing order on 17th December 2004. Therefore, I am of the opinion that it is not appropriate for the Board to raise such a contrary plea at this stage. In any case the claim of the

Trustees is before the District Court, which is not required to be decided in this petition.

12.6 In view of the settled legal position this Court is unable to accept the contention of the learned counsel for the respondent no.1 that the petitioner has an alternative remedy of appeal before the State Government. If the order is in gross violation of the principles of natural justice this Court has ample power to interfere with such orders. In this regard Mr. Joshi has relied upon a decision in the case of Baburam Vs. Zila Parishad, reported in 1969 SC 556 wherein it is held that existence of alternative remedy is no bar to writ petition where the impugned order has been passed in violation of the principles of natural justice. On the facts of the case the notice for hearing was given for the transfer of the school premises; whereas the order has been passed for cancellation of the registration of the school which is a serious matter. Certainly the valuable rights of the petitioner have been affected. Therefore, I am of the view that this petition cannot be thrown away merely on the contention that the petitioner has alternative remedy. When this Court has come to a conclusion that the impugned order has been passed in violation of principles of natural justice, it is a just and proper case to cause indulgence in the matter. I am further of the view that the respondent no.1 being a statutory authority, when it is found that the impugned order has been passed without hearing the petitioner, they should have appreciated the position and ought to have given a fresh hearing and to take a fresh decision accordingly. However, even though the said facts were pointed out to the respondent no.1, the respondent no.1 has chosen to proceed with the matter on merits. Therefore, there are no merits in the contention raised by learned

counsel for the respondent no.1 with regard to alternative remedy.

13.0 In the premises aforesaid, I am of the clear view that the impugned order has been passed in gross violation of principles of natural justice. Therefore, the impugned order dated 17.12.2004 is quashed and set aside. The matter is remanded to the respondent no.1 to take a fresh decision after supplying the documents as demanded by the petitioner and also after giving an opportunity of hearing to the petitioner with regard to the subject matter.

14.0 It is hoped that if an application is given for hearing of the transfer application expeditiously, the respondent no.1 would consider the same in accordance with law. It is also clarified that during the pendency of the proceedings, the petitioner and the respondent no.3 will not run the institution nor they will enroll any students. The parties will cooperate before the respondent no.1 for hearing of the proceedings.

15.0 The petition stands partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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